

*Locality rate supplement* means a geographic-based addition to basic pay, as described in §9701.332.

*Modal rating* means the rating of record that occurs most frequently in a particular pay pool.

*Occupational cluster* means a grouping of one or more associated or related occupations or positions. An occupational cluster may include one or more occupational series.

*Promotion* means an increase to a higher band within the same occupational cluster or an increase to a higher band in a different occupational cluster under implementing directives issued by DHS pursuant to §9701.355.

*Rating of record* means a performance appraisal prepared—

(1) At the end of an appraisal period covering an employee's performance of assigned duties against performance expectations (as defined in §9701.404) over the applicable period; or

(2) To support a pay determination, including one granted in accordance with subpart C of this part, a within-grade increase granted under 5 CFR 531.404, or a pay determination granted under other applicable rules.

*SES* means the Senior Executive Service established under 5 U.S.C. chapter 31, subchapter II.

*SL/ST* refers to an employee serving in a senior-level position paid under 5 U.S.C. 5376. The term “SL” identifies a senior-level employee covered by 5 U.S.C. 3324 and 5108. The term “ST” identifies an employee who is appointed under the special authority in 5 U.S.C. 3325 to a scientific or professional position established under 5 U.S.C. 3104.

*Special rate supplement* means an addition to basic pay for a particular category of employees to address staffing problems, as described in §9701.333. A special rate supplement is paid in place of any lesser locality rate supplement that would otherwise apply.

*Unacceptable performance* means the failure to meet one or more performance expectations, as described in §9701.406.

#### **§9701.305 Bar on collective bargaining.**

As provided in the definition of *conditions of employment* in §9701.504, any pay

program established under authority of this subpart is not subject to collective bargaining. This bar on collective bargaining applies to all aspects of the pay program, including but not limited to coverage decisions, the design of pay structures, the setting and adjustment of pay levels, pay administration rules and policies, and administrative procedures and arrangements.

#### **OVERVIEW OF PAY SYSTEM**

#### **§9701.311 Major features.**

Through the issuance of implementing directives, DHS will establish a pay system that governs the setting and adjusting of covered employees' rates of pay. The DHS pay system will include the following features:

(a) A structure of rate ranges linked to various bands for each occupational cluster, in alignment with the classification structure described in subpart B of this part;

(b) Policies regarding the setting and adjusting of basic pay rate ranges based on mission requirements, labor market conditions, and other factors, as described in §§9701.321 and 9701.322;

(c) Policies regarding the setting and adjusting of supplements to basic pay based on local labor market conditions and other factors, as described in §§9701.331 through 9701.334;

(d) Policies regarding employees' eligibility for pay increases based on adjustments in rate ranges and supplements, as described in §§9701.323 through 9701.325 and 9701.335 through 9701.337;

(e) Policies regarding performance-based pay adjustments, as described in §§9701.341 through 9701.346;

(f) Policies on basic pay administration, including movement between occupational clusters, as described in §§9701.351 through 9701.356;

(g) Policies regarding special payments that are not basic pay, as described in §§9701.361 through 9701.363; and

(h) Linkages to employees' performance ratings of records, as described in subpart D of this part.

#### **§9701.312 Maximum rates.**

(a) DHS may not pay any employee an annual rate of basic pay in excess of

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the rate for level III of the Executive Schedule, except as provided in paragraph (b) of this section.

(b) DHS may establish the maximum annual rate of basic pay for members of the SES at the rate for level II of the Executive Schedule if DHS obtains the certification specified in 5 U.S.C. 5307(d).

#### **§9701.313 Homeland Security Compensation Committee.**

(a) DHS will establish a Homeland Security Compensation Committee to provide options and/or recommendations for consideration by the Secretary or designee on strategic compensation matters such as Departmental compensation policies and principles, the annual allocation of funds between market and performance pay adjustments, and the annual adjustment of rate ranges and locality and special rate supplements. The Compensation Committee will consider factors such as turnover, recruitment, and local labor market conditions in providing options and recommendations for consideration by the Secretary. The Secretary's or designee's determination with regard to those options and/or recommendations is final and not subject to further review.

(b) The Compensation Committee will be chaired by the DHS Undersecretary for Management. The Compensation Committee has 14 members, including 4 officials of labor organizations granted national consultation rights (NCR) in accordance with §9701.518(d)(2). An OPM official will serve as an *ex officio* member of the Compensation Committee. DHS will provide technical staff to support the Compensation Committee.

(c) DHS will establish procedures governing the membership and operation of the Compensation Committee.

(d) An individual will be selected by the Chair to facilitate Compensation Committee meetings. The facilitator will be selected from a list of nominees developed jointly by representatives of the Department and NCR labor organizations, the latter acting as a single party, according to procedures and time limits established by implementing directives. Nominees must be known for their integrity, impar-

tiality, and expertise in facilitation and compensation. If the Department and the labor organizations are unable to reach agreement on a joint list of nominees, they will enlist the services of the Federal Mediation and Conciliation Service (FMCS) to assist them. If the parties are unable to reach agreement with FMCS assistance, each party will prepare a list of up to three nominees and provide those separate lists to FMCS; FMCS may add up to three additional nominees. From that combined list of nominees, the Department and the labor organizations, the latter acting as a single party, will alternately strike names from the list until five names remain; those five nominees will be submitted to the Chair for consideration. The Chair may request that the parties develop an additional list of nominees. If the representatives of the Department's NCR labor organizations, acting as a single party, do not participate in developing the list of nominees in accordance with this section, the Chair will select the facilitator.

(e) After considering the views of all Compensation Committee members, the Chair prepares and provides options and/or recommendations to the Secretary or designee. Members may present their views on the final recommendations in writing as part of the final recommendation package. The Secretary or designee will make the final decision and notify the Compensation Committee. This process is not subject to the requirements established by §§9701.512 (regarding conferring on procedures for the exercise of management rights), 9701.517(a)(5) (regarding enforcement of the duty to consult or negotiate), 9701.518 (regarding the duty to bargain, confer, and consult), or 9701.519 (regarding impasse procedures).

(f) The Secretary retains the right to make determinations regarding the annual allocation of funds between market and performance pay adjustments, the annual adjustment of rate ranges and locality and special rate supplements, or any other matter recommended by the Compensation Committee, and to make such determinations effective at any time.